



REPLY TO
ATTENTION OF:

NEDOD-R-24

Operations Division, Regulatory Branch

SUBJECT: City of New Bedford/R.M. Packer

U.S. Fish & Wildlife Service
ATTN: Mr. Howard Larsen
Regional Director
1 Gateway Center
Newton Corner, Massachusetts 02158

Dear Mr. Larsen:

This is in reference to application number 24-83-301 regarding placement of fill material within the Acushnet River in New Bedford, Massachusetts for waterfront industrial development of the Northern Terminal Area.

Subsequent to our May 5, 1983 Public Notice and our Joint Processing Meeting, your area representatives in a letter dated June 10, 1983 opposed the issuance of this permit and asked that the application be revised to include adjacent unauthorized fill. In a letter dated June 14, 1983, William Ashe, Acting Regional Director, indicated that you may seek elevation of this case for higher level review. Your agency's response to our revised Public Notice of June 30, 1983 including the unauthorized fill reiterated your opposition to issuance of this permit based upon the lack of a mitigation/compensation plan.

The city believes that mitigation within the Acushnet River in New Bedford is not desirable at this time due to the problems with PCB contaminated sediments. At a meeting attended by your representative, the city agreed to mitigate for the resource loss. They are unable to commit to a specific plan for the entire development of the Northern Terminal (approx. 23 acres) pending receipt of development funds. The city hopes to obtain those funds within the next year. In the meantime, the city has a specific development planned for 3.2 acres of shallow and intertidal habitat (original notice of May 5, 1983). They are willing to condition the permit for this project to provide for mitigation of this 3.2 acres in the development of the remaining site (see attached proposed permit for precise wording).

Consider this notification that I intend to issue a Department of the Army permit for the 3.2 acres proposal (May 5, 1983 Public Notice). The enclosed Statement of Findings and Environmental Assessment summarizes the major factors affecting my decision. As stated in the Alternatives section of the SOF, I have determined that no practicable alternatives are available. The additional unauthorized fill and any associated development work at the site will require a separate permit. Although the city is unable to commit to a

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPÉLO ROAD
WALTHAM, MASSACHUSETTS 02254
May 18, 1984

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specific mitigation plan now, our permit requires that the 3.2 acres of lost habitat be compensated for and that the city provide alternative mitigation plans within three months of permit issuance. These plans will also address losses expected from the remaining unauthorized work and associated development that you originally asked to be included in this action.

In accordance with the Memorandum of Agreement between our agencies, your Assistant Secretary for Fish and Wildlife and Parks has 20 working days from the date of this letter to request the Assistant Secretary of the Army for Civil Works that this case be reviewed by higher authority. Should you have any questions concerning this matter or require clarification of any aspect pertaining to our position, please let me know.

Sincerely,



Edward D. Hammond
Major (P), Corps of Engineers
Acting Division Engineer

Enclosure

Copy Furnished:

U.S. Fish & Wildlife Service
Concord Field Office
Attn: Mr. Gordon Beckett
Division of Ecological Service
P.O. Box 1518
Concord, NH 03301

Application No. 24-83-031

Name of Applicant City of New Bedford, Harbor Development Comm.

Effective Date _____

Expiration Date (If applicable) _____

DEPARTMENT OF THE ARMY PERMIT

Referring to written request dated April 25, 1983 for a permit to:

K) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

K) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344);

() Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; P.L. 92-532);

City of New Bedford
Harbor Development Commission
1204 Purchase Street
New Bedford, MA 02740

is hereby authorized by the Secretary of the Army:

to retain and maintain fill placed in an area of approx. 3.2 acres north of the North Terminal Bulkhead. The area will be developed by Rene Servais as a fish truck steam cleaning facility and R.M. Packer, Inc., for a bulk loading and barge transfer facility. R.M. Packer, Inc. will excavate approx. 3,600 cubic yards from the shoreline, dredge approx. 1,500 cubic yards for an access channel to the barge loading ramp, rearrange existing stone riprap, place a steel bulkhead, place 3 timber dolphins in the access channel and install a counterweighted loading ramp.
(PROJECT DESCRIPTION CONTINUED ON PAGE 5)

in Acushnet River

at New Bedford, Massachusetts

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings, give file number or other definite identification marks.)

Plans entitled, "Prop Barge Loading Ramp, Steel Sheet Bulkhead, Stone Shore Protection and to Dredge Access Channel in New Bedford Harbor, New Bedford, Bristol County, MA" sheets 1 and 2 dated "Nov. 26, 1982".

subject to the following conditions:

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, or any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

j. That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

k. That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not completed on or before 31st day of DEC, 19 87, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

u. That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

a. This permit authorizes periodic maintenance dredging of the described area not to exceed ten years from the date of issuance. The permittee is required to notify this office, in writing, 60 days in advance of the intended date of any further maintenance dredging. Written authorization must be obtained before maintenance dredging can begin. However, a separate individual permit will be required if disposal of the dredged material is to be in open waters or wetland areas.

b. All activities authorized by this permit shall be consistent with safe construction practices and in keeping with the Occupational Health and Safety Act of 1970. The Division Engineer may require modifications to the method of construction or equipment used in order to comply with adequate safety standards.

c. No temporary fill (i.e., access roads and/or cofferdams) may be placed in waters or wetlands unless specifically authorized by this permit. When temporary fill is authorized, it shall be disposed of at an upland site and suitably contained to prevent run-off from re-entering a waterway or wetland, and the area restored to its approximate original contours. During use it must be stabilized to prevent erosion.

d. Dredging may not be performed between March 15 and June 15 to protect the fish run.

e. Advance notice (at least three working days) as to the date that dredging will commence will be given to EPA so that they may observe part of the dredging operation.

f. In addition to the proposed sand filter, the ditch draining the filter area should be lined with a series of staked filter cloth across the width of the ditch in order to filter out any remaining particulates in the dredge material effluent.

g. A monitoring system shall be set up to assess the quantity of PCB's in the discharge. If the effluent PCB concentration exceeds the ambient PCB concentration in the discharge inlet by greater than 1.5 times, then the dredging operation will cease and additional filtering devices such as filter cloth shall be used to treat the effluent prior to discharge.

h. Dredging will be by closed bucket.

i. The city will provide mitigation (compensation) for this 3.2 acre loss of habitat as part of their final design for the remainder of the northern terminal area. Alternative mitigation plans will be provided within three (3) months of this permit issuance.

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

- a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.
- b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.
- c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
- d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former condition. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
- e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

- a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated);
- b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

- a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230;
- b. That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.
- c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

DISPOSAL OF DREDGED MATERIAL INTO OCEAN WATERS:

- a. That the disposal will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.
- b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or disposal of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

PERMITTEE

DATE

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

CARL B. SCIPLE
Colonel, Corps of Engineers
District Engineer
US ARMY CORPS OF ENGINEERS

DATE

Transferee hereby agrees to comply with the terms and conditions of this permit.

TRANSFeree

DATE

(PROJECT DESCRIPTION CONTINUED FROM PAGE 1)

The dredged material will be placed within a dredged material containment area on the site being leased by R.M. Packer, Inc. This disposal area will be constructed with earth dikes dewatered through a sand filter and capped with a silt-clay barrier and stone.

HERMAN MELVILLE BLVD.

HERMAN

MELVILLE

BLVD.

N.B.H.D.C.
Rene Servais (lessee)

N.B.H.D.C.

NOTE:

Soundings are in feet and tenths and refer to Mean Low Water.

This plan prepared for license purposes only not for construction.

TICHON AVE.

425.42'

HERVEY

250.00'

120'

PROP DISPOSAL AREA

PROP SLUICE W/STOP-LOGS

PROP DITCH

PROP SAND FILTER

PROP RAMP

PROP STEEL PILE BULKHEAD

PROP RIP-RAP

PROP RIP-RAP

PROP TIMBER DOLPHINS

Exist. Bulkhead

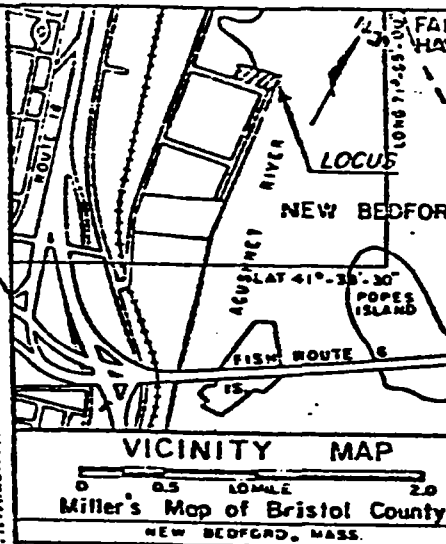
Combined Pierhead & Bulkhead Line

PLAN

ACUSHNET RIVER

SCALE: 1" = 100'

0 50 100 200



New Bedford Harbor
Development Commission
1204 Purchase St.
New Bedford, Ma.
Lic. No. 4728

N.B.H.D.C.
Lic. No. 5130

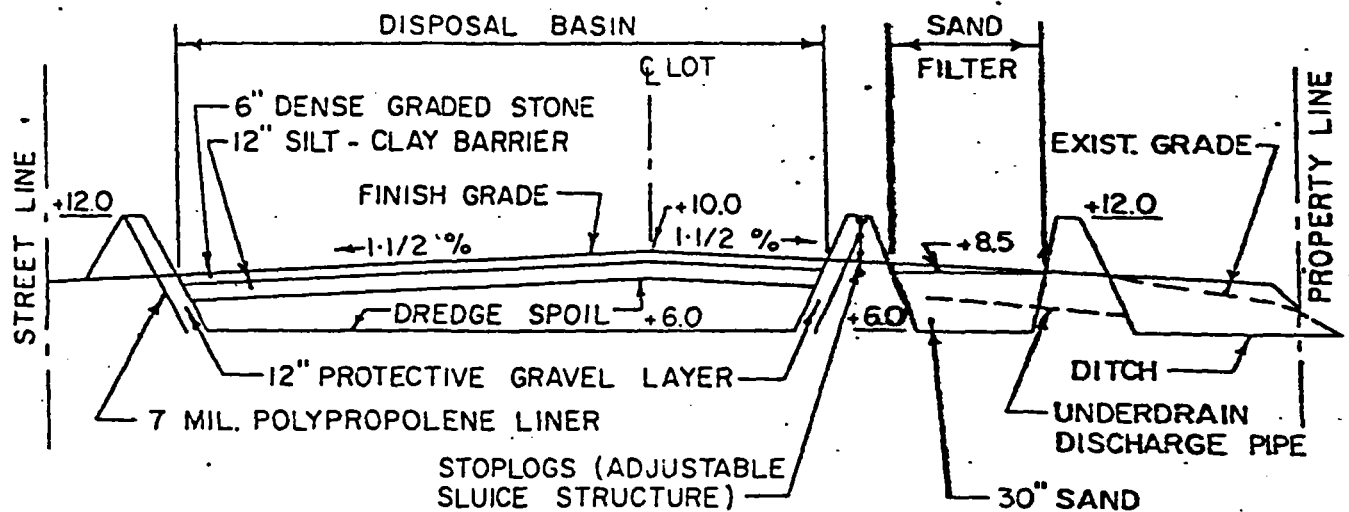
CIVIL

EXCAVATE TO ELEV. -15.0 M.L.W.
BELOW E.L.O.0 = 1,500 CY.
ABOVE E.L.O.0 = 3,000 CY.

PROP BARGE LOADING RAMP, STEEL SHEET BULKHEAD, STONE SHORE PROTECTION AND TO DREDGE ACCESS CHANNEL IN NEW BEDFORD HARBOR, NEW BEDFORD, FLOC BRISTOL COUNTY, MA.

APPLICATION BY:
PACKER MARINE INC
NOV. 26, 1982

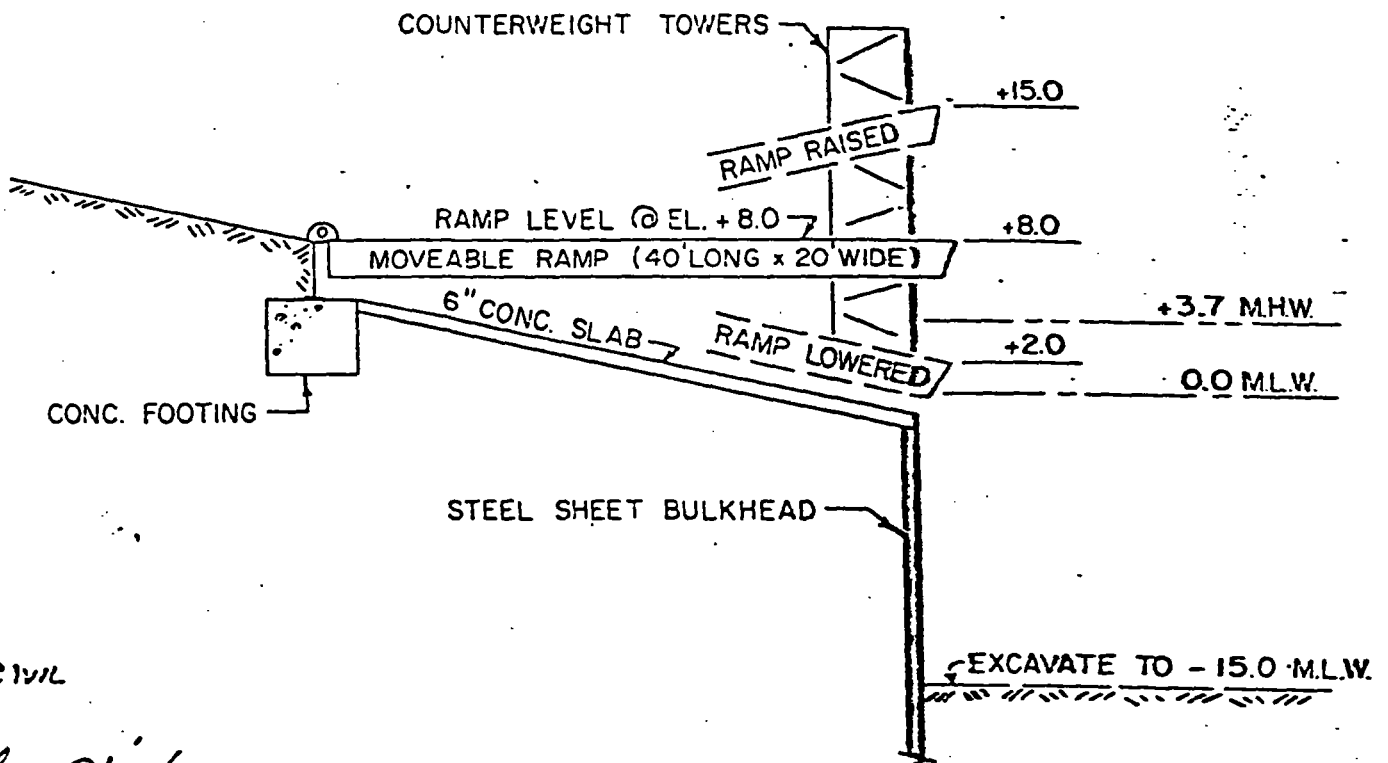
TIBBETTS ENGINEERING CORP NEW BEDFORD, MA



SECTION THRU DISPOSAL AREA

SCALES : 1" = 40' HORIZ.

1" = 10' VERT.



CIVIL

Robert C. Vink

SECTION AT LOADING RAMP

SCALE : 1" = 10'

APPLICATION BY:

PACKER MARINE INC.
NOV. 26, 1982

STATEMENT OF FINDINGS AND ENVIRONMENTAL ASSESSMENT

1. Applicant: City of New Bedford, Harbor Development Commission

Application Number: 24-84-031

2. This permit action is being taken under authority delegated to the Division Engineer from the Secretary of the Army and the Chief of Engineers by Title 33, Code of Federal Regulations, Part 325.8, pursuant to:

- ☒ Section 10 of the River and Harbor Act of 1899
- ☒ Section 404 of the Clean Water Act
- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act

3. Character, location, and purpose of work: The city proposes to retain 3.2 acres of unauthorized fill along the west side of the Acushnet River. The city plans to use this area for waterfront industrial development. A bulk loading and barge transfer bridge is proposed for the property being leased to R.M. Packer. Work being done by R.M. Packer includes dredging of approx. 1500 cubic yards(cy) for an access channel, excavation of approx. 3000 cy from the shoreline, rearrangement of existing riprap, placement of steel pile bulkhead and 3 timber dolphins and installation of a counterweighted loading ramp. The property being leased to Rene Servais will be a fish truck steam cleaning facility.

4. Environmental setting: This area is located in the intensively developed downtown industrial waterfront immediately north of the New Bedford Harbor Development Commission's North Terminal Bulkhead. The city has been promoting waterfront industrial development, particularly fisheries related activities, in its northern harbor since construction of the North Terminal in 1968. The 11.5 acre Penn Central Railroad yard located shoreward of this Northern Harbor area has been obtained by the city and is currently underutilized.

5. Character of resources impacted: The area where fill was placed was intertidal and subtidal estuarine habitat which are typically valuable as spawning, feeding, and rearing areas for recreational and commercial finfishes. Sediments are predominately sand with varying concentrations of PCB's and heavy metals.

6. Relationship to existing uses: The fill was placed in anticipation of expansion of the North Terminal facilities. The areas are part of the planned 23 acre sequential commercial and industrial development of the northern harbor.

7. Alternatives: The removal of all the unauthorized fill would hinder the city's plans for utilization of the northern harbor for fishing and other water-dependent industries.

The use of the 11.5 acre railroad site for water dependent industries would require the abandoning of Herman Melville Blvd., the relocation of existing

7. Alternatives (Continued)

utilities in that roadway and the digging of access channels through the subtidal area and upland. This alternative would reduce redevelopment area from approximately 35 acres to 12 acres, result in a 6 acre loss of subtidal habitat for access channels to the upland and require costly utility relocations. Although this is the environmentally preferred alternative, the above reasons make it impractical.

Providing only enough fill for the Packer proposal would still result in complete loss of the intertidal habitat and a substantial loss of the subtidal habitat for an access channel (see attached sketch). For this reason and the disturbance caused by the removal of the unauthorized fill, this alternative would not have less adverse impacts on the aquatic ecosystem than the city's proposal.

8. ASSESSMENT OF IMPACTS*

A. [C.]** Impacts on physical/chemical characteristics of the aquatic ecosystem:

The project would:

- ☒ (X) change the physical and chemical characteristics of the substrate.
- ☒ (X) change the substrate elevation or contours.
- ☐ () cause erosion, slumping or lateral displacement of the surrounding substrate.
- ☐ () change water fluctuations.

Comment: The placement of approx. 50,000 cubic yards of construction debris, stone, gravel and other solid fill along the west side of the Acushnet River narrowed the river and raised the elevation at that point. Some 3.2 acres of sub tidal habitat was lost. An additional 20 acres may be lost to continue development of the northern terminal area.

These changes would affect:

- ☒ (X) currents, circulation or drainage patterns.
- ☒ (X) suspended particulates and turbidity.

Comment: The narrowing of the river changed but did not adversely affect the currents and circulation. The proposed dredging by R.M. Packer will cause some temporary disruptions and increase the suspended particulates and turbidity.

These changes, would in turn, affect:

- ☒ (X) water quality (clarity, odor, color, taste, D.O. levels, nutrient levels, toxins, pathogens, viruses, etc.).
- ☐ () water temperatures.
- ☐ () salinity gradients.
- ☐ () thermal stratification.

Comment: Temporary impacts on water quality due to the dredging operations will be minimized through the use of equipment designed to remove the sediments with a minimum of trapped water.

B. [E.] Impacts on special aquatic sites:

The changes presented in subpart A would occur in:

- ☐ sanctuaries and/or refuges.
- ☐ wetlands.
- ☐ mudflats.
- ☐ vegetated shallows.
- ☐ coral reefs.
- ☐ riffle and pool areas.

Comment: Not applicable

The special aquatic site provides benefits including:

- ☐ flood control.
- ☐ water purification.
- ☐ food chain production and nutrient export.
- ☐ storm, wave, and erosion buffers.
- ☐ aquifer recharge.
- ☐ habitat for fish and other aquatic organisms.
- ☐ wildlife habitat.

Comment: Not applicable

C. [D.] Impacts on biological characteristics of the aquatic ecosystem

The changes in subpart A and B would adversely impact:

- ☐ endangered or threatened species, or critical habitat for such.
- ☒ fish, mollusks or other aquatic organisms through:
 - ☐ removal.
 - ☐ temporary displacement.
 - ☒ permanent displacement or lowered numbers through changes in overall suitability of habitat in terms of substrate, temperatures, water quality, etc.
 - ☐ interfering with spawning migrations.

Comment: Alewives, killifish and invertebrates thrive in shallow brackish areas and contribute to the basic food chain. Intertidal estuarine habitat, as 0.2 acre of this site was prior to filling, is generally valuable as spawning, feeding, and rearing areas for important recreational and commercial finfishes. The Acushnet River estuary supports large populations of commercially important shellfish and finfish species, such as hard clams, soft-shelled clams, American lobster, and winter flounder.

☐ Or other wildlife in terms of:

- ☒ breeding and nesting habitat.
- ☐ escape cover.
- ☐ travel corridors.
- ☒ food supplies.
- ☐ competition from nuisance species.
- ☐ reduced plant species diversity and interspersions of habitat types.

Comment: Shallow intertidal habitat is important for many waterfowl species for feeding and nesting sites.

D. [F.] Impacts on human uses.

The impacts in Subparts A, B, and C would adversely affect human uses of the resource, through degradation of:

- ☐ existing or potential water supplies.
- ☒ recreational or commercial fisheries.
- ☐ other water-related recreation.
- ☐ aesthetics of the aquatic ecosystem.
- ☐ parks, national and historic monuments, national seashores, wilderness areas, research sites, and similar preserves.

Comment: Although this area is contaminated with polychlorinated biphenyls (PCB's) and heavy metals and is currently closed to commercial and recreational harvesting, the marine resources present are plentiful and are contributors to the seed stock of the general population. Additionally, if the proposed EPA-state clean-up of the river sediments is accomplished, these areas may once again provide for commercial and recreational harvesting.

E. Other Concerns:

The proposal will impact:

- ☐ energy consumption or generation.
- ☐ navigation.
- ☐ safety.
- ☐ air quality.
- ☐ historic resources.
- ☐ noise.
- ☐ land use classification.

Comment: No adverse impacts to any of these factors are expected.

F. (G) Evaluation and Testing

() The permit will be conditioned to require the applicant to use fill from a clean upland source. Therefore, no further evaluation under this section is necessary.

(X) The applicant proposed to discharge dredged material or use fill from other than a clean upland source. The following is an evaluation of the need for testing, testing performed, and evaluation of results:

- 1) Bulk sediment testing in the proposed dredge area shows the material to be predominantly coarse (sand) with low concentrations of heavy metals and volatile solids. Test results for five locations in the dredge area show PCB levels varying from less than one ppm to 24ppm. This indicates there are PCB's in varying amounts throughout the project area. While several of the values are considered high, the material is not considered to be a hazardous waste as are several other areas in the New Bedford Harbor region.
- 2) The applicant has developed a plan to contain the dredged material on adjacent upland property. A sand filter will be used to remove any contaminants from the effluent prior to discharging into an adjacent inlet. Additionally, DEQE's water quality certification specifies that PCB's will be monitored in the project area during the work to insure compliance.

G. (H) Actions to Minimize Adverse Effects

The following actions will be taken to minimize adverse environmental effects:

X The 1500 cubic yards of material to be dredged for an access channel will be placed within a dredged material containment area on the site being leased by R.M. Packer, Inc. The disposal area will be constructed of impervious earth dikes and capped with a silt/clay barrier and stone. The material will be dewatered through a stop-log controlled sluiceway with a sand filter. The location of the disposal area will be recorded at the Registry of Deeds as part of the city leasing requirements. Either a 3-yard coring crane will be used to perform the dredging or siltation curtains will be used if dredging is done with a clamshell. PCB concentrations will be monitored at the site during the dredging portion of the project.

9. SECTION 404(b) COMPLIANCE REVIEW*

A. Restrictions on discharge:

(a) Are there available practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences:

(1) (i) that do not involve discharge into "waters of the U.S." or ocean waters? No see paragraph 7 above.

(ii) at other locations within these waters? No

(2) Is there an alternative in (1) above, not presently owned by the applicant, that can be reasonably obtained? No, New Bedford Harbor is completely developed.

(3) Is the project water dependent? Yes, if not, has the applicant clearly demonstrated that there are no alternative sites available? The purpose of the f-11 is for expansion of the water-dependent industrial development of the harbor.

Is the site a special aquatic site? If so, has the applicant demonstrated other practicable alternatives are more damaging to the aquatic ecosystem? No

(b) Will the discharge:

(1) violate state water quality standards? Water Quality certification was issued July 5, 1983.

(2) violate toxic effluent standards? No

(3) jeopardize endangered species? No

(4) violate standards set by the Dept. of Commerce to protect marine sanctuaries, etc.? No

If so, the discharge should not be permitted.

(c) Will the discharge contribute to significant degradation of "waters on the U.S."? No

With the exception of PCB's, testing results show low contaminant levels. The project will incorporate many protective measures including effluent filtering and monitoring. Also, the city has agreed to compensate (mitigation) for the loss of habitat.

Effects contributing to significant degradation include adverse impacts to:

- (1) human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife, and special aquatic sites. Minor impacts
- (2) life stages of aquatic life and other wildlife. Minor impacts
- (3) diversity, productivity and stability of the aquatic ecosystem, such as loss of fish or wildlife habitat, or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy. The placement of the unauthorized fill resulted in the loss of a fish spawning, feeding and rearing habitat. The city will compensate for this loss.
- (4) recreational aesthetic, and economic values. Minor impacts

B. Factual Determinations:

(a) Physical substrate determinations:

The area where the unauthorized fill was placed had been a tidal river bottom consisting of fine fraction, unconsolidated sediments.

(b) Water circulation, fluctuation, and salinity determinations:

Conversion of a 3.2 acre intertidal and subtidal area to upland has caused changes in the currents. However, there does not appear to have been any adverse impacts.

(c) Suspended particulates/turbidity determinations:

X

PCB's will be monitored during the dredging. A siltation curtain will be used if necessary.

- (d) To what degree will the discharge introduce, relocate, or increase contaminants?

The contaminated, but not hazardous material to be dredged will be encapsulated on site.

(e) Aquatic ecosystem and organism determinations:

There has been a loss of 3.2 acres of intertidal and subtidal habitat.

(f) Proposed disposal site determinations:

- (1) Has the disposal site been confined to the smallest practicable area consistent with the appropriate type of dispersion, or would widespread dispersion be more appropriate?

The dredged material will be disposed of on what is now the "upland" portion of the site, in a diked disposal area on the unauthorized fill.

- (2) Is the proposed mixing zone acceptable in light of: N/A

(i) Water Depth?

(ii) Current velocity, direction, and variability?

(iii) Turbulence?

(iv) Stratification due to obstructions, salinity, or density profiles?

(v) Discharge vessel speed?

(vi) Rate of discharge?

(vii) Ambient concentrations of constituents of interest?

(viii) Dredged material characteristics, particularly concentrations of constituents, amounts of materials, types of materials (silt, sand, clay), and settling velocities?

(ix) Number of discharges/unit time?

(x) Other factors affecting rates and patterns of mixing?

(g) What are the potential cumulative effects on the aquatic ecosystem? The cumulative impact of the loss of shallow estuarine habitat is significant as the lower Acushnet River is highly modified.

- (h) What are the secondary effects on the aquatic ecosystem?

The area may have been a spawning, feeding, and rearing areas for important recreational and commercial finfish and shellfish. Loss of such an area could result in lowered populations.

C. Findings of compliance or non-compliance.

The proposed discharge:

Complies with the Guidelines with the inclusion of appropriate conditions to minimize adverse effects from dredging on ecosystem and to provide for compensation of lost habitat.

10. Findings:

- a. DEQE issued a state license to R.M. Packer on October 14, 1983 to construct and maintain certain structures in the Acushnet River. The fill was previously authorized by Department of Public Works licenses Nos. 4728, 5128, 5130.
- b. State water quality certification was issued July 5, 1983.
- c. A public notice adequately describing the proposed work in Area A was issued on May 5, 1983 and sent to all known interested parties. A revised notice was issued June 30, 1983 to include Areas B & C. All comments received are noted below and have been evaluated and are included in our administrative record of this action.

1) A joint processing meeting was held June 2, 1983. At that time each of the Federal resource agencies indicated that it was difficult to evaluate only the R.M. Packer portions of the site and asked if all of the unauthorized fill areas could be combined into one application. We felt this was appropriate and we issued the revised notice.

a) The National Marine Fisheries Service recommended that a mitigation plan such as a saltmarsh creation project be provided, that development be allowed for water-dependent purposes only and that Areas B & C should be reserved for use by the Environmental Protection Agency's PCB clean-up program for the Acushnet River. If these sites are not needed for PCB contaminated sediment disposal, any development should be water-dependent and preferably fisheries related.

b) The EPA also suggested that retention of the Areas B & C be coordinated with their Superfund Remedial Action Master Plan as the siting analysis for disposal sites has not yet been completed. They suggested that a mitigation plan be proposed to create fish passage facilities for anadromous fish, and that any development be water-dependant and preferably fisheries related. They did not object to the development plans for Area A, the barge-transfer station and fish hauling truck steam cleaning facility, but recommended the following conditions:-

- (1) Advance notice of commencement of dredging.
- (2) Lining the ditch draining the filter area with a series of staked hay bales across the width of the ditch.
- (3) Monitoring of the effluent PCB concentration.
- (4) Use of a 3-yard coring crane to perform the dredging.

c) The Fish and Wildlife Service classified the habitat filled as Resource Category 3; activities should include no net loss of habitat value. They objected to retention of the fill unless an appropriate mitigation/compensation plan is incorporated. Several possibilities for mitigation were suggested, including wetland creation, enhancement of existing aquatic habitat or providing anadromous fish access to existing but isolated aquatic habitat.

The Regional Director, Fish & Wildlife Service, in a letter dated June 14, 1983, stated that if the permit is issued, he may seek elevation of the case in accordance with the 1983 Memorandum of Agreement.

2) Coastal Zone Management consistency certification was not required as the project is below their threshold for review.

d. General Evaluation:

1) Unauthorized fill was placed at three sites over a 10 acre intertidal and subtidal area of the Acushnet River by the City of New Bedford and various contractors. This permit would only allow retention of 3.2 acres of unauthorized fill and construction of a fish truck cleaning facility and a barge transfer facility. The additional unauthorized fill and any associated development work at the site will require a separate permit.

2) The unauthorized fill was brought to our attention in May 1982 by the National Marine Fisheries Service. The city maintains that they understood that it was acceptable to place fill out to the bulkhead line. We informed them in November 1982 that the harbor lines were declared inoperative in May 1970 and that a Corps permit was required. In March 1983, we received an application from the city and R.M. Packer to develop one of the three parcels. Our review revealed no evidence of a willful violation of Federal law and declined legal action.

3) The first public notice issued and discussed at a Joint Processing meeting included only the parcel with the proposed development by R.M. Packer and Rene Servais. It was later revised to include the other 2 parcels to which the city plans to expand its waterfront industrial development.


4) The city has agreed to EPA's requested conditions and to mitigate for the resource loss however, for areas within the immediate jurisdiction of the city any new fishery and wildlife habitat development would require major modifications to currently contaminated areas. Due to the current problems of PCB contamination in the harbor, no mitigation is desirable at this time. They are unable to commit for the above reasons to a specific plan for the entire development (approx. 23 acres) of the Northern Terminal pending receipt of development funds. The city hopes to obtain those funds within the next year. However, they are willing to condition the permit for this project to provide for mitigation of the 3.2 acres in the development of the remaining site.

5) The wastewater from the truck cleaning operation will be discharged into the sanitary sewer system. No impacts on the aquatic ecosystem are anticipated from this operation.

6) Because the 3.2 acre site is now upland, it would not affect the use of the remainder of the area for dredged material disposal (contaminated or hazardous). Coordination with EPA's Superfund Program is not possible at this time as they have not yet completed the disposal area siting analysis. The city has stated that they intend to actively participate in the evaluation of all feasible dredged material disposal alternatives.

11. I find that based on the evaluation of environmental effects discussed in this document, the decision on this application is not a major Federal action significantly affecting the quality of the human environment. Hence, an environmental impact statement is not required.

12. I have considered all factors affecting the public interest including conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage protection, land use classifications, navigation, recreation, water supply, water quality, public safety, energy needs, food production, and in general, the needs and welfare of the people. After weighing favorable and unfavorable effects as discussed in this document, I find it in the public interest to issue this permit, only for the fill and work at the Packer and Servais site, not for the unauthorized fill north of this site (Area B & C)


MAY 19 1971
DIVISION ENGINEER

17 May 1971
DATE